

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

FAGEN, INC., and
MIDWEST ETHANOL TRANSPORT, LLC,

Plaintiffs/Third-Party Plaintiff,

v.

ORDER

Civil File No. 12-2703 (MJD/SER)

EXERGY DEVELOPMENT GROUP
OF IDAHO, LLC, and JAMES CARKULIS,

Defendants,

v.

HAWLEY TROXELL ENNIS & HAWLEY, LLP,

Third-Party Defendant.

Keith S. Moheban and Timothy M. Kelley, Leonard Street and Deinard, PA,
Counsel for Fagen, Inc. and Midwest Ethanol Transport, LLC.

Angelo L. Rosa and Michael F. Cockson, Faegre Baker Daniels LLP, Counsel for
Exergy Development Group of Idaho, LLC and James T. Carkulis.

Bryon G. Ascheman and Richard J. Thomas, Burke & Thomas, PLLP, Counsel for
Hawley Troxell Ennis & Hawley LLP.

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Steven E. Rau filed September 11, 2013. Third-Party Defendant Hawley Troxell Ennis & Hawley LLP filed objections to the Report and Recommendation.

Pursuant to statute, the Court has conducted a de novo review upon the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based upon that review, the Court adopts the Report and Recommendation of United States Magistrate Judge Rau filed September 11, 2013.

Accordingly, based upon the files, records, and proceedings herein, **IT IS HEREBY ORDERED:**

1. The Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge Steven E. Rau filed September 11, 2013 [Docket No. 58].
2. Third-Party Defendant Hawley Troxell Ennis & Hawley LLP's Motion to Dismiss [Docket No. 34] is **DENIED**.

Dated: October 25, 2013

s/ Michael J. Davis

Michael J. Davis

Chief Judge

United States District Court